

**IN THE UNITED STATES  
PATENT AND TRADEMARK OFFICE**

**Patent Application**

**Inventors:** Doree Duncan Seligmann et al.

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**Examiner:** Bradford F. Fritz

**Docket No.:** 630-055US

**Title:** Intelligent Selection of Message Delivery Mechanism

Commissioner for Patents  
P.O. Box 1450  
Alexandria, VA 22313-1450

Dear Sir:

**APPEAL BRIEF UNDER 37 CFR 41.67**

Pursuant to 37 CFR 41.67, this brief is filed in support of the appeal in this application.

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**REAL PARTY IN INTEREST**

The real party of interest in this application is the assignee of this application: Avaya Technology LLC of Basking Ridge, NJ.

**RELATED APPEALS AND INTERFERENCES**

There are no related appeals or interferences.

**STATUS OF CLAIMS**

Claims 29 through 52 are being appealed.

**STATUS OF AMENDMENTS**

All amendments have been entered.

**SUMMARY OF THE CLAIMED SUBJECT MATTER**

Some telecommunications terminals are capable of sending messages in more than one fashion. For example, a hybrid cellular/"Wi-Fi" telephone is capable of communicating either as a cell phone (e.g., via Code Division Multiple Access (CDMA), etc.) or as a "Wi-Fi" station (i.e., in accordance with an Institute of Electrical and Electronics Engineers [IEEE] 802.11 protocol). As another example, a telecommunications terminal might be capable of communicating via both the Internet and the Public Switched Telephone Network (PSTN).

**(Specification, background, page 2, paragraph [0005])**

The present invention enables telecommunications terminals to automatically and intelligently determine which of a plurality of available delivery mechanisms is most advantageous for transmitting a message, where a delivery mechanism comprises at least one of the following:

- (i) a physical medium (e.g., copper, radio, etc.),
- (ii) a physical layer protocol (e.g., Direct Sequence Spread Spectrum [DSSS], etc.),
- (iii) a medium access control (e.g., Code Division Multiple Access [CDMA], etc.), and
- (iv) a network for transport (e.g., the Public Switched Telephone Network [PSTN], the Internet, etc.).

**(Specification, summary, page 2, paragraph [0006])**

In particular, in accordance with the illustrative embodiment, when a message is to be sent from a first terminal to a second terminal, the delivery mechanism for the message is automatically selected based on one or more properties of the message, such as the identity of the user of the first terminal, the identity of the user of the second terminal, the semantic content of the message, a priority for the message, etc. **(Specification, summary, page 2, paragraph [0007])**

The following example illustrates the utility of the illustrative embodiment of the present invention: Bob, who works for a defense contractor, places a telephone call via a hybrid cellular/Wi-Fi telecommunications terminal to Colonel Flag, an Army representative on the corporate premises. Because the call is directed to Colonel Flag, the call is transmitted over a cellular network, rather than the corporate Wi-Fi network, as cellular networks are typically more secure than Wi-Fi networks. Subsequently, Bob uses the hybrid telecommunications terminal to send a high-priority unclassified email message to a co-worker. The cellular service provider's email system is not very reliable, and therefore it

is preferable to send the email message via Wi-Fi because reliability, and not security, is the most important criterion for a high-priority unclassified message. **(Specification, summary, page 3-4, paragraph [0012])**

The present application comprises eight (8) independent claims. Each shall be presented, summarized, and mapped to the specification by page and paragraph and to the drawings, if any.

Independent claim 29 recites:

**29.** A method comprising selecting one of a plurality of physical media for sending a message from a first telecommunications terminal to a second telecommunications terminal, based on the semantic content of said message.

Claim 29 recites a method in which a physical medium is selected for sending a message based on the semantic content of the message, and is described in the specification at **Pages 8-9, paragraphs [0037] and [0038], and drawings at Figure 5, boxes 560 and 570.**

Independent claim 32 recites:

**32.** A method comprising selecting one of a plurality of physical layer protocols for sending a message from a first telecommunications terminal to a second telecommunications terminal, based on the semantic content of said message.

Claim 32 recites a method in which a physical layer protocol is selected for sending a message based on the semantic content of the message, and is described in the specification at **Pages 8-9, paragraphs [0037] and [0040], and drawings at Figure 5, boxes 560 and 590.**

Independent claim 35 recites:

**35.** A method comprising selecting one of a plurality of medium access controls for sending a message from a first telecommunications terminal to a second telecommunications terminal, based on the semantic content of said message.

Claim 35 recites a method in which a medium access control is selected for sending a message based on the semantic content of the message, and is described in the specification at **Pages 8-10, paragraphs [0037] and [0041], and drawings at Figure 5, boxes 560 and 595.**



Independent claim 38 recites:

**38.** A method comprising selecting one of a plurality of networks for sending a message from a first telecommunications terminal to a second telecommunications terminal, based on the semantic content of said message.

Claim 38 recites a method in which a network is selected for sending a message based on the semantic content of the message, and is described in the specification at **Pages 8-9, paragraphs [0037] and [0039], and drawings at Figure 5, boxes 560 and 580.**

Independent claim 41 recites:

**41.** A method comprising selecting one of a plurality of physical media for sending a message based on the user to whom said message is directed.

Claim 41 recites a method in which a physical medium is selected for sending a message based on the user to whom the message is directed, and is described in the specification at **Pages 8-9, paragraphs [0037] and [0038], and drawings at Figure 5, boxes 560 and 570.**

Independent claim 44 recites:

**44.** A method comprising selecting one of a plurality of physical layer protocols for sending a message based on the user to whom said message is directed.

Claim 44 recites a method in which a physical layer protocol is selected for sending a message based on the user to whom the message is directed, and is described in the specification at **Pages 8-9, paragraphs [0037] and [0040], and drawings at Figure 5, boxes 560 and 590.**

Independent claim 47 recites:

**47.** A method comprising selecting one of a plurality of medium access controls for sending a message based on the user to whom said message is directed.

Claim 47 recites a method in which a medium access control is selected for sending a message based on the user to whom the message is directed, and is described in the specification at **Pages 8-10, paragraphs [0037] and [0041], and drawings at Figure 5, boxes 560 and 595.**

Independent claim 50 recites:

**50.** A method comprising selecting one of a plurality of networks for sending a message based on the user to whom said message is directed.

Claim 50 recites a method in which a network is selected for sending a message based on the user to whom the message is directed, and is described in the specification at **Pages 8-9, paragraphs [0037] and [0039], and drawings at Figure 5, boxes 560 and 580.**

**GROUND OF OBJECTION AND REJECTION TO BE REVIEWED ON APPEAL**

**Ground 1: 35 U.S.C. 102 Rejection of Claims 29-52**

Claims 29-52 were rejected under 35 U.S.C. 102(e) as being anticipated by D. Vassilovski, U.S. Patent 6,813,264, (hereinafter "Vassilovski").

The ground of rejection is the assertion that Vassilovski teaches the selection of a delivery mechanism for sending a message based on the semantic content of the message, or on the user to whom the message is directed. The issue on appeal is: Does Vassilovski, in fact, teach these features?

## **ARGUMENTS**

### **Ground 1: 35 U.S.C. 102 Rejection of Claims 29-52**

Claims 29-52 were rejected under 35 U.S.C. 102(e) as being anticipated by Vassilovski.

Independent claim 29 recites:

**29.** A method comprising selecting one of a plurality of physical media for sending a message from a first telecommunications terminal to a second telecommunications terminal, based on the semantic content of said message.

Nowhere does Vassilovski teach or suggest, either alone or in combination with the other references, what independent claim 29 recites – namely, selecting a physical medium for sending a message based on the message's semantic content (i.e., the meaning of the contents of the message). For example, a message about a corporation's strategic plan might be sent via the most secure of available physical media, while a message about football scores might instead be sent via the least expensive of available physical media. Vassilovski, in contrast, teaches setting up a call via one of two methods (circuit switching or packets over the public Internet) based on the destination address or call-setup parameters [Col. 2, lines 41-47]:

*In a preferred embodiment, the SIP server instantiates circuit-switched calls only for intersystem calls requiring voice-call-latency characteristics and end-to-end data connectivity, as might be indicated by, e.g., an address or portion thereof of the destination device not being registered with the SIP server, and/or specific SIP call setup parameters.*

The applicants respectfully submit that Vassilovski teaches nothing about considering the semantic content of the message. Moreover, while the Office's assertion that

*"Vassilovski teaches a system in which messages that are sent based on their address destination, SIP call setup parameters, or encryption"*

[Final Office action, page 2, second to last paragraph]

might in fact be true, the Office's subsequent statement

*"meeting the limitation of sending a message based on semantic content of said message" [ibid]*

is false.

For this reason, the applicants respectfully submit that the rejection of independent claim 29 is traversed.

Independent claim 32 recites:

**32.** A method comprising selecting one of a plurality of physical layer protocols for sending a message from a first telecommunications terminal to a second telecommunications terminal, based on the semantic content of said message.

For the same reason as for claim 29, the applicants respectfully submit that the rejection of claim 32 is traversed.

Independent claim 35 recites:

**35.** A method comprising selecting one of a plurality of medium access controls for sending a message from a first telecommunications terminal to a second telecommunications terminal, based on the semantic content of said message.

For the same reason as for claims 29 and 32, the applicants respectfully submit that the rejection of claim 35 is traversed.

Independent claim 38 recites:

**38.** A method comprising selecting one of a plurality of networks for sending a message from a first telecommunications terminal to a second telecommunications terminal, based on the semantic content of said message.

For the same reason as for the previous claims, the applicants respectfully submit that the rejection of claim 38 is traversed.

Independent claim 41 recites:

**41.** A method comprising selecting one of a plurality of physical media for sending a message based on the user to whom said message is directed.

Nowhere does Vassilovski teach or suggest, either alone or in combination with the other references, what claim 41 recites – namely, selecting a physical medium (e.g., copper, radio, etc.) for sending a message based on the user to whom said message is directed.

While Vassilovski does teach using different networks (in particular, the Public Switched Telephone Network [PSTN] versus the Public Internet) for a call based on the

destination address of the call, this is entirely different from the present invention as recited in claim 41. First of all, Vassilovski uses the destination address to determine if the call is an intrasystem call or an intersystem call, and then decides based on this information whether to select the PSTN or Public Internet for the call. Vassilovski therefore decides based on the physical location of the destination which network to use for the call – not on the particular user who is being called (which are two different things, particularly for Voice over IP and other peer-to-peer types of calls). Second, Vassilovski is concerned with selecting a network, and mentions nothing about different physical media (e.g., copper, radio, etc.) for transmitting calls.

For these reasons, the applicants respectfully submit that the rejection of claim 41 is traversed.

Independent claim 44 recites:

**44.** A method comprising selecting one of a plurality of physical layer protocols for sending a message based on the user to whom said message is directed.

For the same reason as for claim 41, the applicants respectfully submit that the rejection of claim 44 is traversed.

Independent claim 47 recites:

**47.** A method comprising selecting one of a plurality of medium access controls for sending a message based on the user to whom said message is directed.

For the same reason as for claims 41 and 44, the applicants respectfully submit that the rejection of claim 47 is traversed.

Independent claim 50 recites:

**50.** A method comprising selecting one of a plurality of networks for sending a message based on the user to whom said message is directed.

For the same reason as for claims 41, 44, and 47, the applicants respectfully submit that the rejection of claim 50 is traversed.

**CONCLUSION**

The applicants have demonstrated that the logic underlying the Office's rejection is untenable, and, therefore, that the rejection is not sustainable. For this reason, the applicants respectfully request the Board of Appeals to reverse the decision of the Examiner as provided for in 37 C.F.R. 41.50(a).

Respectfully,  
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**CLAIMS APPENDIX**

**1-28.** (Canceled)

**29.** (Previously presented) A method comprising selecting one of a plurality of physical media for sending a message from a first telecommunications terminal to a second telecommunications terminal, based on the semantic content of said message.

**30.** (Previously presented) The method of claim 29 where each of said physical media is associated with a respective degree of security, and wherein the selection is also based on said respective degrees of security.

**31.** (Previously presented) The method of claim 29 where the selection is also based on the user to whom said message is directed.

**32.** (Previously presented) A method comprising selecting one of a plurality of physical layer protocols for sending a message from a first telecommunications terminal to a second telecommunications terminal, based on the semantic content of said message.

**33.** (Previously presented) The method of claim 32 where each of said physical layer protocols is associated with a respective degree of security, and wherein the selection is also based on said respective degrees of security.

**34.** (Previously presented) The method of claim 32 where the selection is also based on the user to whom said message is directed.

**35.** (Previously presented) A method comprising selecting one of a plurality of medium access controls for sending a message from a first telecommunications terminal to a second telecommunications terminal, based on the semantic content of said message.

**36.** (Previously presented) The method of claim 35 where each of said medium access controls is associated with a respective degree of security, and wherein the selection is also based on said respective degrees of security.

**37.** (Previously presented) The method of claim 35 where the selection is also based on the user to whom said message is directed.



**38.** (Previously presented) A method comprising selecting one of a plurality of networks for sending a message from a first telecommunications terminal to a second telecommunications terminal, based on the semantic content of said message.

**39.** (Previously presented) The method of claim 38 where each of said networks is associated with a respective degree of security, and wherein the selection is also based on said respective degrees of security.

**40.** (Previously presented) The method of claim 38 where the selection is also based on the user to whom said message is directed.

**41.** (Previously presented) A method comprising selecting one of a plurality of physical media for sending a message based on the user to whom said message is directed.

**42.** (Previously presented) The method of claim 41 where each of said physical media is associated with a respective degree of security, and wherein the selection is also based on said respective degrees of security.

**43.** (Previously presented) The method of claim 41 where the selection is also based on the user who sends said message.

**44.** (Previously presented) A method comprising selecting one of a plurality of physical layer protocols for sending a message based on the user to whom said message is directed.

**45.** (Previously presented) The method of claim 44 where each of said physical layer protocols is associated with a respective degree of security, and wherein the selection is also based on said respective degrees of security.

**46.** (Previously presented) The method of claim 44 where the selection is also based on the user who sends said message.

**47.** (Previously presented) A method comprising selecting one of a plurality of medium access controls for sending a message based on the user to whom said message is directed.

**48.** (Previously presented) The method of claim 47 where each of said medium access controls is associated with a respective degree of security, and wherein the selection is also based on said respective degrees of security.

**49.** (Previously presented) The method of claim 47 where the selection is also based on the user who sends said message.

**50.** (Previously presented) A method comprising selecting one of a plurality of networks for sending a message based on the user to whom said message is directed.

**51.** (Previously presented) The method of claim 50 where each of said networks is associated with a respective degree of security, and wherein the selection is also based on said respective degrees of security.

**52.** (Previously presented) The method of claim 50 where the selection is also based on the user who sends said message.

**EVIDENCE APPENDIX**

There is no evidence submitted pursuant to 37 CFR §§ 1.130, 1.131, or 1.132.

**RELATED PROCEEDINGS APPENDIX**

There are no related proceedings.